

tmd3574/mrm
Return Date & Time:
July 26, 2012 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE:

Chapter 13 Case No: 808-70951-AST

NOTICE OF MOTION

ADAM DIERS AND
ANA DIERS
A/K/A ANA DIAZ,

Debtors.

-----X

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this Court before the Honorable Alan S. Trust, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, Long Island Federal Courthouse, 290 Federal Plaza, Central Islip, New York, Courtroom 970, on July 26, 2012 at 11:00 a.m., or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. §1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Syosset, New York
July 2, 2012

s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
115 EILEEN WAY; SUITE 105
SYOSSET, NY 11791
(516) 622-1340

tmd3574/mrm
Return Date and Time:
July 26, 2012 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 808-70951-AST
IN RE:

ADAM DIERS AND
ANA DIERS
A/K/A ANA DIAZ,

APPLICATION

Debtors.

-----X

TO THE HONORABLE, ALAN S. TRUST, U.S. BANKRUPTCY JUDGE:

MARIANNE DEROSA, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 7 on February 28, 2008. Pursuant to an Order entered on April 30, 2008, the instant case was converted to one under Chapter 13, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.

2. The confirmed Plan currently on file with the Court (hereinafter referred to as "the Plan") is dated July 8, 2008 and reflected on the Court's docket as number 30. The Plan provides for payments in the amount of \$750.00 per month three months and \$840.00 per month for the remaining fifty seven months. The Plan was confirmed by an Order entered by the Court on July 29, 2008.

3. At the time of confirmation, the Bar date to file non-governmental proofs of claim had not expired. As a result, the Plan was confirmed based upon proofs of claim that were filed and other debts as scheduled in the Debtor's petition. At the time of confirmation, the Plan was sufficient to pay all secured, priority, and general unsecured creditors.

4. On May 30, 2012 M & T Bank (hereinafter referred to as "M & T") filed an amended general unsecured proof of claim in the amount of \$26,758.86 and is reflected on the Court's claims register as number 4-2.

5. As a direct result of the amended proof of claim filed by M & T, the Plan is no longer feasible and will not pay all claims in full over the remaining 11 months.

6. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Dated: Syosset, New York
July 2, 2012

s/Marianne DeRosa
Marianne DeRosa
Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE:

Chapter 13 Case No: 808-70951-AST

ADAM DIERS AND
ANA DIERS
A/K/A ANA DIAZ,

CERTIFICATE OF SERVICE
BY MAIL

Debtors.

-----X

This is to certify that I, Matthew R. Matz, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

ADAM DIERS
667 EMPIRE AVENUE
WEST BABYLON, NY 11704

ANA DIERS
667 EMPIRE AVENUE
WEST BABYLON, NY 11704

ADAM C. GOMERMAN, ESQ.
807 EAST JERICHO TURNPIKE
HUNTINGTON STATION, NY 11746

ANDREW M THALER
THALER & GERTLER LLP
90 MERRICK AVENUE
SUITE 400
EAST MEADOW, NY 11554

WELLS FARGO BANK
STEIN, WIENER & ROTH, LLP
ONE OLD COUNTRY ROAD, STE 113
CARLE PLACE, NY 11514

RESIDENTIAL FUNDING
C/O FEIN SUCH KUHN & SHEPARD PC
7 CENTURY DRIVE
PARSIPPANY, NJ 07054

This July 2, 2012

/s/Matthew R. Matz
Matthew R. Matz, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
115 Eileen Way, Suite 105
Syosset, New York 11791
(516) 622-1340

Index No: 808-70951-AST
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

ADAM DIERS AND
ANA DIERS
A/K/A ANA DIAZ,

Debtors.

NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE

MARIANNE DeROSA, TRUSTEE
115 EILEEN WAY; SUITE 105
SYOSSET, NY 11791
(516) 622-1340

revised
03/09/06